REMARKS/ARGUMENTS

Claims 1-41, 60, and 70-91 are pending in the application. Claims 1-41, 60, and 70-91 are rejected as obvious under 35 U.S.C. 103(a).

Claim Rejections - 35 U.S.C. §103

Claims 1-7, 9-12, 21-27, 29-32, 41, 60, 79, 80, and 91 stand rejected as obvious over ARCserve v6.5 for Windows NT User Guide under 35 U.S.C. 103(a); claims 8 and 28 stand rejected as obvious over ARCserve v6.5 for Windows NT User Guide in view of Nixon (U.S. 6,513,060) under 35 U.S.C. 103(a); claims 13 and 33 stand rejected as obvious over ARCserve v6.5 for Windows NT User Guide in view of Acharya (U.S. 6,343,326) under 35 U.S.C. 103(a); claims 14 and 34 stand rejected as obvious over ARCserve v6.5 for Windows NT User Guide in view of Patrick (U.S. 5,790,541) under 35 U.S.C. 103(a); claims 15-19 and 36-39 stand rejected as obvious over ARCserve v6.5 for Windows NT User Guide in view of Schein (U.S. 6,226,623) under 35 U.S.C. 103(a); claims 20 and 40 stand rejected as obvious over ARCserve v6.5 for Windows NT User Guide in view of Mandyam (U.S. 6,236,989) under 35 U.S.C. 103(a); and claim 81 stands rejected as obvious over ARCserve v6.5 for Windows NT User Guide in view of Slotznik (U.S. 6,609,146) under 35 U.S.C. 103(a). The rejection is traversed and reconsideration is requested.

With regard to independent claims 1 and 21, the Examiner asserts that the ARCserve v6.5 for Windows NT User Guide reference discloses various elements of claims 1 and 21 but "fails to teach wherein the destination nodes consists at least in part of at least one self-service financial transaction terminal". The Zeanah reference previously cited by the Examiner in rejecting independent claims 1 and 21 is withdrawn by the Examiner, and the Examiner has substituted the Examiner's allegation that "[t]he Office has concluded that the specific type of node, and any financial transaction terminal does not change the functionality of the retrieving and managing of data process, and any type of use may be used with a reasonable expectation of success. The specific type of node or network , and its intended use,

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does not patentably distinguish the claimed invention. It would have been obvious to one with ordinary skill in the art at the time the invention was made to recognize that any type of node may be utilized."

With regard to independent claim 79, the Examiner asserts that the ARCserve v6.5 for Windows NT User Guide reference discloses various elements of claim 79 but "fails to teach wherein the plurality of nodes consists at least in part of at least one self-service financial transaction terminal". The Zeanah reference formerly cited by the Examiner in rejecting independent claim 79 is likewise withdrawn by the Examiner, and the Examiner has substituted the Examiner's allegation that "[t]he Office has concluded that the specific type of node, and any financial transaction terminal does not change the functionality of the retrieving and managing of data process, and any type of use may be used with a reasonable expectation of success. The specific type of node or network , and its intended use, does not patentably distinguish the claimed invention. It would have been obvious to one with ordinary skill in the art at the time the invention was made to recognize that any type of node may be utilized."

With regard to independent claim 91, the Examiner asserts that the ARCserve v6.5 for Windows NT User Guide reference discloses various elements of claim 91 but "fails to teach wherein the destination nodes consists at least in part of at least one self-service financial transaction terminal". The Examiner asserts further that "[t]he Office has concluded that the specific type of node, and any financial transaction terminal does not change the functionality of the retrieving and managing of data process, and any type of use may be used with a reasonable expectation of success. The specific type of node or network , and its intended use, does not patentably distinguish the claimed invention. It would have been obvious to one with ordinary skill in the art at the time the invention was made to recognize that any type of node may be utilized."

The Examiner's allegation that "[t]he Office has concluded that the specific type of node, and any financial transaction terminal does not change the functionality of the retrieving and managing of data process, and any type of use may be used with a reasonable expectation of success. The specific type of node or network , and its intended use, does not patentably distinguish the claimed invention. It would have been obvious to one with ordinary skill in the art at the time the invention was made to recognize that any type of node may be utilized" is nothing more than an allegation by the Examiner of "Official Notice" under the guise of an "Office conclusion" which should be withdrawn because it is improper, e.g.,:

- the notice taken is not capable of such instant and unquestionable demonstration as to defy dispute;
- the notice taken is not supported by citation to some reference work recognized as a standard in the pertinent art; and
- a clear and unmistakable technical line of reasoning underlying the decision to take such notice is not provided.

The notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute."[1] It would not be appropriate for the examiner to take "Official Notice" of facts without citing a prior art reference where the facts asserted are not capable of instant and unquestionable demonstration as being well-known.[2] Assertions of specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.[3] If "Official Notice" is taken, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable.[4]

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[1] *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970) (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). Emphasis added.
[2] MPEP 2144.03. Emphasis in the original.
[3] *Id.* Emphasis added.
[4] *Id.*

First, assertions of the sort made by the examiner in the technology area of the subject invention (computer systems assuring the integrity and validity of financial transaction data) are inherently unlikely to be capable of such instant and unquestionable demonstration as to defy dispute. Second, the examiner does not cite a prior art reference in rejecting independent claims 1, 21, 79 and 91 beyond excerpts from ARCserve v6.5 for Windows NT User Guide, which merely shows a user how to manually schedule periodic backup copying and storage from Windows NT machines (See, e.g., ARCserver, p. 1-2 and 1-3), how to manually schedule and select backup storage medium (See, e.g., ARCserver, p. 4-4. 4-5, 4-8, 6-2, and 6-11), and how to manually monitor backup copying while it is running (See, e.g., ARCserver, p. 9-23 and 10-15). Finally, no technical line of reasoning underlying the decision to take such notice is presented beyond the axiomatic recitation that "the Office has concluded...."

For these reasons, the undersigned requests that each instance of "Official Notice" under the guise of an "Office conclusion" be withdrawn. The remarks to this point are a challenge to the implicit finding that "Official Notice" under the guise of an "Office conclusion" is proper in this case. The remarks are responsive in that they distinctly and specifically point out the error in taking "Official Notice" under the guise of an "Office conclusion" in this fashion – as required by 37 CFR 1.111(b). While the MPEP asserts:

> To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b),

such a traverse is required only where "Official Notice" was properly taken. Otherwise, an improper "Official Notice" , e.g., mere assertion, would operate as an inappropriate burden-shifting tactic.

In the event the examiner's alleged "Official Notice" under the guise of an "Office conclusion" is found proper with respect to one or more claims, remarks regarding each such claim specifically pointing out errors in the action and stating why the noticed fact is not considered to be common knowledge or well-known in the art are presented in this Remarks section relevant to that claim.

Regarding independent claims 1, 21, 79, and 91, ARCserve v6.5 for Windows NT User Guide lacks one or more limitations recited in claims 1, 21, 79, and / or 91 in at least the following respects:

- Instead of remotely accessing a communications network by a network management server coupled via the network to one or more client terminals and to various destination nodes, including one or more self-service financial transaction terminal, as recited in claims 1 and 21, or a network automated information retrieval system coupled to one or more communications networks having various nodes including one or more self-service financial transaction terminals, an interactive user module coupled with a network management system server connected to the communications network, as recited in claim 79, the ARCserver backup software merely shows a user how to manually schedule periodic backup copying and storage from Windows NT machines (See, e.g., ARCserver, p. 1-2 and 1-3).

- Instead of remotely configuring a retrieval command associated with one or more of the destination nodes according to one or more parameters with which the network management server is pre-programmed, including parameters for retrieval destination node selection, retrieval file selection, retrieval status, retrieval prioritizing, and retrieval schedule, remotely transmitting the retrieval command by the network management server to the destination node, as recited in claims 1 and 21, or a network management system server which is pre-programmed for remotely configuring a retrieval command associated with one or more of the nodes according to parameters for retrieval node selection, retrieval file selection, retrieval status, retrieval prioritizing, and

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retrieval schedule, for transmitting the retrieval command to the node, and for
receiving a response to the retrieval command from the node, as recited in
claim 79, the ARCserver backup software merely shows a user how to
manually schedule and select backup storage medium (See, e.g., ARCserver,
p. 4-4. 4-5, 4-8, 6-2, and 6-11).

- Instead of remotely transmitting a response to the retrieval command from the
destination node to the network management server which remotely stores the
response, and allowing a user at one of the client terminals to monitor both the
retrieval command and the response, as recited in independent claims 1 and
21, or a number of client terminals coupled to the interactive user module for
allowing user interaction with the network automated information retrieval
system for remotely monitoring the retrieval command associated with the
node by the user, the response from the node to the retrieval command by the
user, and configuring a user request to the network node via the network
management server, as recited in claim 79, ARCserver backup software
merely shows a user how to manually monitor backup copying while it is
running (See, e.g., ARCserver, p. 9-23 and 10-15).

- Instead of defining operational parameters for uploading files from the
plurality of automated teller machines to the network management server
according to any of a single selected day for, a number of days in, a day and
time for, a selection of automated teller machines for, missed days in,
automated teller machines that were unavailable during, and automated teller
machines that reported an exception during, a retrieval period, and uploading
and logging files according to the pre-defined operational parameters and
priority rules for access by a user, as recited in independent claim 91, the
ARCserver backup software merely shows a user how to manually schedule
periodic backup copying and storage from Windows NT machines (See, e.g.,
ARCserver, p. 1-2 and 1-3), how to manually schedule and select backup
storage medium (See, e.g., ARCserve, p. 4-4. 4-5, 4-8, 6-2, and 6-11), and how

to manually monitor backup copying while it is running (See, e.g., ARCserver, p. 9-23 and 10-15).

Nixon, Acharya, Patrick, Schein, Mandyam, and/or Slotznik, either separately or in any combination with ARCserve v6.5 for Windows NT User Guide, lack one or more limitations recited in independent claims 1, 21, 79, and 91 and fail to remedy the deficiencies of ARCserve v6.5 for Windows NT User Guide in at least the following respects:

- Nixon merely discloses monitoring Internet websites by a monitor unit, e.g., by pinging the web server, performing a trace route on web servers, accessing the website, monitoring the web server, etc., a control unit of which can be configured with the number of times to retry getting a status, the action to be taken after the monitor unit fails to respond 'n' times, or to receive an error message when the monitor unit exceeds its maximum simultaneous host limit. See, e.g., Nixon et al. Col 5, line 50-Col 6, line 4; Col 20, lines 34-37; and Col 23, lines 45-46;

- Acharya merely discusses, e.g., simultaneously delivering an IP packet to a plurality of reception nodes using IP multicast protocol (A.K.A. dense mode PIM) or DVMRP, in which each transmission node transfers a multicast packet without recognizing the reception nodes and a connection for the multicast is established only after a reception node receives a first packet and returns a signal indicating the receipt, which makes it impossible to establish a connection for the IP multicast prior to acknowledgement from each reception node in the path unless each reception node is known to the transmission node. See, e.g., Acharya et al., Col 3, lines 21-46;

- Patrick merely discloses message routing via a primary transceiver node connected to the Internet and various secondary nodes connected to the primary transceiver node via an intermediate network which are further connected via a secondary network to various terminals, such as PCs, in order

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to conserve internetwork addresses. See, e.g., Patrick et al., Abstract; and Col 9, line 60-Col 10, line 18;

- Schein merely discloses that banks provide customers financial services via ATMs, CATs, screen phones, PCs configured for banking, PDAs, IVR systems, and smart cards, as well as traditional human bank tellers and teaches a global messaging system accessible to customers and bank employees through branch systems, ATMs, CATs, screen phones, PCs using a card or PIN, account number(s), name, or social security number. See, e.g. Schein et al. Col 7, lines 20-24 and Col 8, lines 55-60;

- Mandyam discloses nothing more than a network-based 'help' architecture for software applications residing on a host data processing system which automatically converts a user's 'Help' request into a data format readable by the computer network. See, e.g., Mandyam et al., Abstract and Col 3, line 60-Col 4, line 2; and

- Slotznick discloses nothing more than automatic switching between a first mode in which a first executable program, such as a browser requesting, receiving and displaying information from a LAN, WAN, intranet, extranet or the Internet, is visible and active, and a second mode in which a second executable program is visible and active that is triggered by detecting that the first executable program has initiated an information processing mode, and the first mode is restored on completion of the information processing. See, e.g., Slotznick, Abstract and Col 12, lines 50-57.

Consequently, ARCserve v6.5 for Windows NT User Guide, Nixon, Acharya, Patrick, Schein, Mandyam, and/or Slotznick either separately or in combination with one another, do not disclose, nor even suggest, the required combination of limitations of independent claims 1, 21, 79, and 91. Because the cited references, either alone or in combination, do not teach the limitations of independent claims 1, 21, 79, and 91, the Examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (C.C.P.A., 1974) (holding that a

prima facie case of obviousness requires the references to teach all of the limitations of the rejected claim); See also MPEP §2143.03.
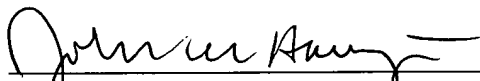
The Examiner has failed to establish the required *prima facie* case of unpatentability for independent claims 1, 21, 79, and 91 and similarly has failed to establish the required *prima facie* case of unpatentability for claims 2-20 that depend on claim 1, claims 22-41, 60, and 70-78 that depend on claim 21, and claims 80-90 that depend on claim 79, and which recite further specific elements that have no reasonable correspondence with the references.

Conclusion

In view of the foregoing amendment and these remarks, each of the claims remaining in the application is in condition for immediate allowance. Accordingly, the examiner is requested to reconsider and withdraw the rejection and to pass the application to issue. The examiner is respectfully invited to telephone the undersigned at (336) 607-7318 to discuss any questions relating to the application.

Respectfully submitted,

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